



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Benxi Ding
Wanda Los Angeles Properties Co., LTD
1330 Avenue of the Americas, Suite 36B
New York, NY 10019

NOV - 9 2017

RE: MUR 7141
Benxi Ding

Dear Mr. Ding:

On September 30, 2016, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 24, 2017, the Commission found, on the basis of the information in the complaint, that there is no reason to believe you violated 52 U.S.C. § 30121 or 11 C.F.R. § 110.20. Accordingly, on November 7, 2017, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Antoinette Fuoto, the attorney assigned to this matter, at (202) 694-1634 or afuoto@fec.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR: 7141

RESPONDENTS: Wang Jianlin
Wanda Group
Benxi Ding
Beverly Hills Residents and Businesses to Preserve Our City, an
Exploratory Committee
Wanda Beverly Hills Properties LLC
Wanda Los Angeles Properties Co., LTD
Athens BH Development LLC
Lakeshore East Parcel P, LLC
Magellan Development Group

I. INTRODUCTION

The complaint in this matter alleges that Beverly Hills Residents and Businesses to Preserve Our City, a California state ballot measure committee established to oppose a local ballot measure, accepted foreign national contributions, and that foreign nationals directed the committee's efforts to oppose the ballot measure in violation of the Federal Election Campaign Act of 1971 (the "Act"). For the reasons discussed below, the Commission finds no reason to believe that Wang Jianlin; The Wanda Group; Benxi Ding; Beverly Hills Residents and Businesses to Preserve Our City, an Exploratory Committee; Wanda Beverly Hills Properties LLC; Wanda Los Angeles Properties Co., LTD; Athens BH Development LLC; Lakeshore East Parcel P, LLC; and Magellan Development Group violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20, and closes the file.

1 **II. FACTS**

2 **A. Respondents**

3 Wanda Group is a Global Fortune 500 company based in China.¹ Wang Jianlin is the
4 Chairman of Wanda Group.² Wanda Group's activities include real estate and entertainment
5 ventures in the United States.

6 Lakeshore East Parcel P, LLC ("Lakeshore") and Magellan Development Group
7 ("Magellan"), two Illinois-based companies, are working with Wanda Group on a \$900 million
8 real estate project in Chicago.³ Lakeshore's four principals are also principals of Magellan, and
9 each is a U.S. citizen.⁴

10 Wanda Los Angeles Properties Co., LTD ("Wanda Los Angeles") is a U.S. subsidiary of
11 Wanda Group. The sole officer of Wanda Los Angeles is Benxi Ding, a Chinese national.⁵

12 Wanda Beverly Hills Properties LLC ("Wanda Beverly Hills") is also a U.S. subsidiary
13 of Wanda Group. The general manager of Wanda Beverly Hills is Xiang Shu, a Chinese
14 national.⁶ The deputy general manager of Wanda Beverly Hills is Rohan a'Beckett, an
15 Australian native and permanent resident of the U.S.⁷

1 ¹ See <https://www.wanda-group.com/>.

2 ² See <https://www.wanda-group.com/chairman/>.

3 ³ Compl. at 1-3.

4 ⁴ The principals are Joel Carlins, James Loewenberg, David Carlins, and Robin Tebbe. See Magellan Resp. at 1; Lakeshore Resp. at 1.

5 ⁵ Compl. at 2.

6 ⁶ *Id.*

7 ⁷ See Wanda Beverly Hills Resp. at 13.

Athens BH Development LLC ("Athens") is an Arizona-based development company that is working with Wanda Los Angeles and Wanda Beverly Hills as the development partner on a real estate project called One Beverly Hills.⁸

Beverly Hills Residents and Businesses to Preserve Our City, an Exploratory Committee (the "Ballot Measure Committee") is a ballot measure committee that registered with the state of California on August 9, 2016,⁹ to oppose a ballot measure that would have approved an expansion of the Hilton Hotel property in Beverly Hills.¹⁰

B. Background

Wanda Los Angeles and Wanda Beverly Hills are developing a real estate project in Beverly Hills, California called One Beverly Hills.¹¹ In 2016, Wanda Group reportedly sought to change the original city-approved plan for One Beverly Hills by increasing the size of the development and adding a hotel on the property.¹² This proposed expansion apparently led to a conflict with the adjacent Hilton Hotel property, which also sought to expand.¹³ A measure which would have approved the Hilton expansion project ("Measure HH") was placed on the local Beverly Hills ballot in November 2016.¹⁴

⁸ Compl. at 3.

⁹ *Id.*, Ex. A.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The ballot measure was ultimately defeated. See Gene Maddaus, *Beverly Hills Voters Reject 26-Story Condo Initiative, Handing Victory to Wanda Group*, Variety, Nov. 9, 2016, available at <http://variety.com/2016/biz/news/beverly-hills-wanda-group-beverly-hilton-measure-hh-1201913873/>.

1 As noted above, the Ballot Measure Committee was established to oppose Measure HH.
2 Rohan a'Beckett (deputy general manager of Wanda Beverly Hills) is the Principal Officer of the
3 Ballot Measure Committee,¹⁵ and the Ballot Measure Committee is "sponsored"¹⁶ by Wanda
4 Beverly Hills and its development partner Athens,¹⁷ with "major funding"¹⁸ from Lakeshore.¹⁹
5 Wanda Beverly Hills and Wanda Los Angeles assert that Wanda Beverly Hills contributed funds
6 to the Ballot Measure Committee, but it obtained those funds through a \$1.2 million loan from
7 Lakeshore; Wanda Beverly Hills needed the loan because it did not yet have revenue from the
8 One Beverly Hills project.²⁰ They also assert that no foreign funds were used to fund or repay
9 the loan, that decisions regarding the loan were made by U.S. citizens, and that a'Beckett, a U.S.
10 permanent resident, made the decision to transfer the funds to the Ballot Measure Committee as a
11 contribution.²¹ Wanda Beverly Hills sought the advice of the California Fair Political Practices
12 Commission ("FPPC") in reporting the contribution to the Ballot Measure Committee as a
13 contribution from Lakeshore.²²

¹⁵ Compl. at 4.

¹⁶ According to the Complaint, California law sets forth four circumstances under which a company can be listed as a "sponsor" of a committee. They either must: contribute 80 percent or more of the committee's money; collect money for the committee using payroll deductions or dues; provide all or nearly all of the administrative services for the committee; or set the policies for soliciting or spending committee funds. *See id.* at 7 (citing Cal. Govt. Code § 82048.7).

¹⁷ Athens asserts that it made no monetary contributions to the Ballot Measure Committee and that Jay Newman, member of Athens and a principal of the Ballot Measure Committee, is a U.S. citizen. Athens Resp. at 1.

¹⁸ According to the Complaint, under California law, the "Major Funding" designation requires a contribution of \$50,000 or more. *See* Compl. at 4.

¹⁹ Lakeshore purportedly has not made any political contributions other than to the Ballot Measure Committee. *Id.* at 3.

²⁰ Wanda Resp. at 1; *id.*, Ex. 1.

²¹ *Id.* at 1; *id.*, Ex. 1.

²² *See id.*, Ex. 3. The Wanda Response notes that parallel allegations were brought before the FPPC, and the FPPC "found no evidence" that Lakeshore was a foreign principal and dismissed the matter on October 6, 2016. *Id.*

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("Act"), prohibits any "foreign national" from "directly or indirectly" making a contribution or donation of money or any other thing of value in connection with a Federal, State, or local election.²³ "Foreign national" includes anyone who "is not a citizen of the United States or a national of the United States . . . and who is not lawfully admitted for permanent residence[.]"²⁴

In addition, the law prohibits anyone from knowingly providing "substantial assistance in the solicitation, making, acceptance, or receipt of a contribution or donation" by a foreign national.²⁵ Commission regulations also state that foreign nationals "shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee."²⁶ The Commission has concluded that where permitted by state law, a U.S. subsidiary of a foreign national corporation may donate funds for state and local elections if (1)

at 1; *id.*, Ex. 7. The response further notes that OGC determined in MUR 6678 (*Mindgeek USA, Inc., et al.*) that the Act's prohibition on foreign national contributions does not apply to state and local ballot measure committees. *Id.* at 2.

²³ 52 U.S.C. § 30121(a)(1); *see* 11 C.F.R. § 110.20(b)-(c). Courts have consistently upheld the provisions of the Act prohibiting foreign-national contributions, on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over activities and processes integral to democratic self-government, which include making political contributions or express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

²⁴ 52 U.S.C. § 30121(b); *see* 11 C.F.R. § 110.20(a)(3).

²⁵ 11 C.F.R. § 110.20(h)(1); *see* 52 U.S.C. § 30121.

²⁶ 11 C.F.R. § 110.20(i).

1 the donations derive entirely from funds generated by the subsidiaries' U.S. operations, and (2)
2 all decisions concerning the donations, except those setting overall budget amounts, are made by
3 individuals who are U.S. citizens or permanent residents.²⁷

4 The Complaint alleges that Lakeshore's funding of the Ballot Measure Committee was a
5 foreign contribution under the Act, because the only known ties between Lakeshore and the
6 Ballot Measure Committee are through Wanda Group.²⁸ The Complaint notes that individuals
7 and entities with ties to Wanda Group (including a Beckett, Lakeshore, and Jay Newman of
8 Athens) appear in the Ballot Measure Committee's paperwork, and alleges that Jianlin, Wanda
9 Group's Chairman and a Chinese national, directed the Ballot Measure Committee's opposition
10 to Measure HH.²⁹

11 As an initial matter, it not clear from the relevant precedent that the scope of the foreign
12 national prohibition extends to ballot initiative activity.³⁰ Assuming *arguendo* that it does, none

²⁷ See Advisory Op. 2006-15 (TransCanada Corp.); *see also* Contribution, Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,943-44 (Nov. 19, 2002) (explanation and justification ("E&J")) (explaining that the statutory term "indirectly" does not cover U.S. subsidiaries of foreign corporations). In Advisory Opinion 2006-15 (TransCanada Corp.), the subsidiaries' board of directors, which included foreign nationals, set an overall, annual budget for political donations and disbursements. The board, however, delegated the decision-making authority to a group of individuals comprised exclusively of U.S. citizens or permanent residents. See AO 2006-15 at 5-6.

²⁸ See Compl. at 4-5.

²⁹ *Id.* at 4-7.

³⁰ See First Gen. Counsel's Rpt. at 10-14, MUR 6678 (Mindgeek USA, Inc., *et al.*). In MUR 6678, OGC recommended that the Commission not pursue an enforcement action in the absence of information in the record that a ballot measure committee's activity was "inextricably linked" with the election of a candidate, because there was no clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity. First Gen. Counsel's Rpt. at 19, MUR 6678. The Commission split 3-3 on this recommendation. See Certification, MUR 6678 (Mar. 18, 2015); Statement of Reasons, Comm'r. Ravel, MUR 6678; Statement of Reasons, Comm'r. Weintraub, MUR 6678; Statement of Reasons, Comm'rs. Petersen, Hunter & Goodman, MUR 6678; Supp. Statement of Reasons, Comm'r Goodman, MUR 6678. Here, there is no information in the record showing that the committee's activity was linked (inextricably or otherwise) with the election of a candidate.

1 of the funds at issue appear to originate with a foreign national, nor does it appear that foreign
2 nationals participated in the decision to make the contribution to the Committee.³¹

3 Lakeshore, a domestic organization with U.S. citizens as principals, loaned \$1.2 million
4 to Wanda Beverly Hills, a domestic subsidiary of a foreign corporation.³² According to the loan
5 agreement, the funds were derived from U.S. revenue and are to be paid back with funds derived
6 from U.S. revenue.³³ And the Complaint does not provide evidence beyond the existence of a
7 business relationship between the managers of Lakeshore and Wanda Group that the funds
8 loaned to Wanda Beverly Hills originated with Wanda Group or any other foreign national.³⁴

9 Similarly, Wanda Beverly Hills states that a U.S. permanent resident (a'Beckett) made
10 the decision on behalf of Wanda Beverly Hills to make the contribution to the Ballot Measure
11 Committee. And although the Complaint includes information regarding Jianlin's public
12 lobbying for the project, as well as the fact that the general manager of Wanda Beverly Hills is a
13 Chinese national, that information alone does not refute the assertion that a'Beckett made the
14 decision to contribute to the Ballot Measure Committee, nor does it indicate that any of the
15 foreign nationals named in the Complaint participated in the decision to make the contribution.³⁵

³¹ See note 27 *supra*.

³² Wanda Resp., Ex. A.

³³ *Id.*

³⁴ See First General Counsel's Report at 8-9, MUR 7081 (Floridians for a Strong Middle Class) (business ties with foreign nationals, standing alone, is insufficient to support a finding that contribution was made by foreign national).

³⁵ See AO 2006-15. *Cf.* MUR 6184 (Skyway Concession Company, LLC) (finding a violation where individual making the decisions regarding the contributions was a foreign national).

1 Therefore, based on this information, the Commission finds no reason to believe that the
2 respondents violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20 in connection with the allegation
3 in the Complaint, and closes the file.

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